

Appl. No. : 10/090,340

Responsive to an Office Action mailed September 1, 2004

Response filed on February 1, 2005

REMARKS

Claims 1, 2, 4-6, 9-27, 29-36, and 93-145 are pending.

Amendments to the Claims

Claims 1, 35, and 36 have been amended to recite that “the low bulk density calcium silicate hydrate is added as a powder.” Support for this amendment is found, for example, in ¶ [0020] on page 5 and in ¶ [0036] on pages 9-10 of the specification.

Claims 1, 35, and 36 have been amended to recite that the low bulk density calcium silicate hydrate “comprises from about 0.5% to about 50% by weight of the formulation.” Support for this amendment is found, for example, in ¶ [0020] on page 5 of the specification (“The low-density CSH has an accelerating effect when added to fiber cement or concrete on a weight basis of about 0.5% to 50%”).

Claims 103, 115, and 135 have been amended to delete the reference to “aluminosilicate aggregate.” Support for this amendment is found, for example in original claims 50, 62, and 82.

Claims 7, 8, and 28 have been canceled without prejudice. The Applicant reserves the right to present these claims in one or more continuation and/or divisional applications.

Claim Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1, 2, 4-6, 9-27, 29-36, and 93-145 stand rejected under 35 U.S.C. § 112, first paragraph as not enabled. Applicant has amended independent claims 1, 35, and 36 to recite that “the low bulk density calcium silicate hydrate comprises from about 0.5% to about 50% by weight of the formulation.” Support for this amendment is found, for example, in ¶ [0020] on page 5 of the specification. Amended claims 1, 35, and 36 now recite an amount of low bulk density calcium silicate hydrate disclosed in the specification and are no longer inclusive of any amount of low bulk density calcium silicate hydrate. Accordingly, Applicant respectfully submits that the rejection is overcome.

Claim Rejections Under 35 U.S.C. §§ 112 and 132

Claims 93-145 stand rejected under 35 U.S.C. §§ 112 and 132 as not supported by the specification as originally filed.

Claims 103, 115, and 135 have been amended to delete the term “aluminosilicate.” Support for this amendment is provided in original claims 50, 62, and 82. Applicant respectfully submits that the rejection is overcome.

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Claims 93–145 correspond directly to original claims 46–92, respectively, that is claim 93 is supported by claim 46, claim 94 by claim 47, and so on. Applicant respectfully submits that the rejection is overcome.

Claim Rejections Under 35 U.S.C. §§ 102 and/or 103

Claims 1, 2, 4–36, and 93–145 stand rejected under 35 U.S.C. §§ 102(a) and 102(b) as anticipated by, or in the alternative, as obvious over Leture et al. (U.S. Patent No. 5,709,743). In order to anticipate a claim, a reference must disclose or suggest every element recited in the claim. As discussed below, adding the low bulk-density calcium silicate hydrate (CSH) as a powder as recited in claims 1, 2, 4–6, 9–27, 29–36, and 93–145 is not disclosed or suggested in Leture et al. Applicant respectfully submits that the rejections of claims 7, 8, and 28 are moot in light of their cancellation.

Claims 1, 35, and 36 have been amended to recite that the low bulk-density CSH is added as a powder. Support for this amendment is found, for example, in ¶ [0020] on page 5 and in ¶ [0036] on pages 9–10 of the specification. Leture et al. discloses adding the accelerant disclosed therein only as a suspension. Leture et al. at 3:61 (“it is in the form of a suspension.”). Consequently, Applicant respectfully submits that Leture et al. does not anticipate any of claims 1, 35, and/or 36. Because claims 2, 4–6, 9–36, and 93–145 are dependent on claim 1 and recite additional features, Applicant respectfully submits that Leture et al. does not disclose or suggest every element recited in these claims, and consequently, these rejections are also overcome.

Applicant respectfully submits that claims 1, 2, 4–6, 9–27, 29–36, and 93–145 are also non-obvious over Leture et al. A *prima facie* rejection for obviousness requires: (1) a disclosure or suggestion of every element of the claim in the cited reference or references; (2) a suggestion or motivation to modify or combine the references; and (3) a reasonable expectation of success. The suggestion to combine and the reasonable expectation of success must be found in the prior art or known to one skilled in the art. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As discussed above, Leture et al. does not disclose or suggest every element recited in independent claims 1, 35, and/or 36. Moreover, Leture et al. does not provide a motivation to modify the disclosed material to the powder material recited in claims 1, 35, and 36, and also does not provide any expectation that the modification would be successful. In particular, Leture

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et al. teaches against adding an accelerant as a powder. In describing the accelerant disclosed therein, Leture et al. states:

It is thought that the effectiveness of the agent according to the invention as regards early setting and hardening of siliceous hydraulic binders results largely from the wet grinding of the hydrated hydraulic binder (characteristic (a) of the invention), resulting in seeds which are much finer and more numerous than those which would have been obtained by a dry grinding (characteristic (b) of the invention). *Finally, it is necessary to use the product in aqueous suspension (characteristic (c) of the invention) because drying would result in reagglomeration of the fine particles and in a loss in effectiveness of the accelerating agent.*

Leture et al. at 4:10-21 (emphasis added). Leture et al. teaches against adding an accelerant as a powder, as recited in amended claims 1, 35, and 36, and states that such a modification will be unsuccessful. Accordingly, Applicant respectfully submits that claims 1, 35, and 36 are not obvious over Leture et al. Because claims 2, 4-6, 9-27, 29-36, and 93-145 are dependent on claim 1 and recite additional features, Applicant respectfully submits that Leture et al. does not disclose or suggest every element recited in these claims, and consequently, these rejections are also overcome.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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